



General Assembly

Substitute Bill No. 1092

January Session, 2013



**AN ACT CONCERNING FEDERAL HOME LOAN BANKS AND THE
INSURERS REHABILITATION AND LIQUIDATION ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-907 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) The conservation, rehabilitation and liquidation of insurance
4 companies and other persons subject to the provisions of sections 38a-
5 903 to 38a-961, inclusive, are a matter of vital public interest and affect
6 the relationships between insureds and their insurers.

7 (1) An application or petition under sections 38a-912, 38a-914, 38a-
8 915, 38a-918, 38a-919 and 38a-920, shall operate as an automatic stay
9 applicable to all persons, other than the receiver and as specified under
10 subsection (c) of this section, which shall be permanent and survive the
11 entry of an order of conservation, rehabilitation or liquidation, and
12 which shall prohibit: (A) The transaction of further business; (B) the
13 transfer of property; (C) interference with the receiver or with a
14 proceeding under said sections; (D) waste of the insurer's assets; (E)
15 dissipation and transfer of bank accounts; (F) the institution or further
16 prosecution of any actions or proceedings in which the insurer is a
17 party; (G) the obtaining of preferences, judgments, attachments,
18 garnishments, or liens against the insurer, its assets or its
19 policyholders; (H) the levying of execution against the insurer, its

20 assets, or its policyholders; (I) the making of any sale or deed for
21 nonpayment of taxes or assessments that would lessen the value of the
22 assets of the insurer; (J) the withholding from the receiver of books,
23 accounts, documents, or other records relating to the business of the
24 insurer; or (K) any other threatened or contemplated action that might
25 lessen the value of the insurer's assets or prejudice the rights of
26 policyholders, creditors, or shareholders, or the administration of any
27 proceeding under said sections.

28 (2) Notwithstanding any other provision of law, no bond shall be
29 required of the commissioner as a prerequisite for the issuance of any
30 injunction or restraining order pursuant to this section.

31 (3) Upon motion of a person subject to the stay, the court, after
32 notice to the receiver and a hearing, may modify or grant relief from
33 the stay, provided said person shall have the burden of proof and shall
34 establish by clear and convincing evidence that such relief should be
35 granted.

36 (4) All matters that may be stayed, enjoined or barred under this
37 section and all matters involving its interpretation or operation shall
38 remain within the exclusive jurisdiction of the domiciliary receivership
39 court.

40 (b) The receiver may apply to any court outside of the state for the
41 relief described in subsection (a) of this section.

42 (c) Notwithstanding subsections (a) and (b) of this section or any
43 other provision of this chapter, no person shall be stayed, enjoined or
44 barred from exercising or enforcing any right or cause of action under
45 any pledge, security, credit, loan, advance, reimbursement or
46 guarantee agreement or arrangement or any similar agreement or
47 arrangement or other credit enhancement to which a Federal Home
48 Loan Bank, as defined in 12 USC 1422, as amended from time to time,
49 is a party.

50 Sec. 2. Section 38a-928 of the general statutes is repealed and the

51 following is substituted in lieu thereof (*Effective October 1, 2013*):

52 (a) Every transfer made or suffered and every obligation incurred
53 by an insurer within one year prior to the filing of a successful petition
54 for rehabilitation or liquidation under sections 38a-903 to 38a-961,
55 inclusive, is fraudulent as to then existing and future creditors if made
56 or incurred without fair consideration, or with actual intent to hinder,
57 delay, or defraud either existing or future creditors. A transfer made or
58 an obligation incurred by an insurer ordered to be rehabilitated or
59 liquidated under said sections, which is fraudulent under this section,
60 may be avoided by the receiver, except as to a person who in good
61 faith is a purchaser, lienor, or obligee for a present fair equivalent
62 value, and except that any purchaser, lienor, or obligee, who in good
63 faith has given a consideration less than fair for such transfer, lien, or
64 obligation, may retain the property, lien or obligation as security for
65 repayment. The court may, on due notice, order any such transfer or
66 obligation to be preserved for the benefit of the estate, and in that
67 event, the receiver shall succeed to and may enforce the rights of the
68 purchaser, lienor [,] or obligee.

69 (b) (1) A transfer of property other than real property shall be
70 deemed to be made or suffered when it becomes so far perfected that
71 no subsequent lien obtainable by legal or equitable proceedings on a
72 simple contract could become superior to the rights of the transferee
73 under subsection (c) of section 38a-930.

74 (2) A transfer of real property shall be deemed to be made or
75 suffered when it becomes so far perfected that no subsequent bona fide
76 purchaser from the insurer could obtain rights superior to the rights of
77 the transferee.

78 (3) A transfer which creates an equitable lien shall not be deemed to
79 be perfected if there are available means by which a legal lien could be
80 created.

81 (4) Any transfer not perfected prior to the filing of a petition for

82 liquidation shall be deemed to be made immediately before the filing
83 of the successful petition.

84 (5) The provisions of this subsection apply whether or not there are
85 or were creditors who might have obtained any liens or persons who
86 might have become bona fide purchasers.

87 (c) Any transaction of the insurer with a reinsurer shall be deemed
88 fraudulent and may be avoided by the receiver under subsection (a) of
89 this section if: (1) The transaction consists of the termination,
90 adjustment, or settlement of a reinsurance contract in which the
91 reinsurer is released from any part of its duty to pay the originally
92 specified share of losses that had occurred prior to the time of the
93 transaction, unless the reinsurer gives a present fair equivalent value
94 for the release; and (2) any part of the transaction took place within
95 one year prior to the date of filing of the petition through which the
96 receivership was commenced.

97 (d) Any person receiving property from the insurer or any benefit
98 thereof which is a fraudulent transfer under subsection (a) of this
99 section shall be personally liable therefor and shall be bound to
100 account to the liquidator.

101 (e) Notwithstanding subsections (a) to (d), inclusive, of this section
102 or any other provision of this chapter, no receiver or any other person
103 shall avoid any transfer or obligation that arises under or in connection
104 with any pledge, security, credit, loan, advance, reimbursement or
105 guarantee agreement or arrangement or any similar agreement or
106 arrangement or other credit enhancement to which a Federal Home
107 Loan Bank, as defined in 12 USC 1422, as amended from time to time,
108 is a party, that is made, suffered or incurred prior to or after the filing
109 of a successful petition for rehabilitation or liquidation under sections
110 38a-903 to 38a-961, inclusive. Such transfer or obligation may be
111 avoided by the receiver or other person if such transfer or obligation
112 was made, suffered or incurred with actual intent to hinder, delay or
113 defraud the insurer, the receiver or existing or future creditors.

114 Sec. 3. Subsection (a) of section 38a-930 of the general statutes is
115 repealed and the following is substituted in lieu thereof (*Effective*
116 *October 1, 2013*):

117 (a) (1) A preference is a transfer of any of the property of an insurer
118 to or for the benefit of a creditor, for or on account of an antecedent
119 debt, made or suffered by the insurer within one year before the filing
120 of a successful petition for liquidation under sections 38a-903 to 38a-
121 961, inclusive, the effect of which transfer may be to enable the creditor
122 to obtain a greater percentage of this debt than another creditor of the
123 same class would receive. If a liquidation order is entered while the
124 insurer is already subject to a rehabilitation order, then such transfers
125 shall be deemed preferences if made or suffered within one year before
126 the filing of the successful petition for rehabilitation, or within two
127 years before the filing of the successful petition for liquidation,
128 whichever time is shorter.

129 (2) [Any] Except as specified in subdivision (3) of this subsection,
130 any preference may be avoided by the liquidator if: (A) The insurer
131 was insolvent at the time of the transfer; (B) the transfer was made
132 within four months before the filing of the petition; (C) the creditor
133 receiving it or to be benefited thereby or his agent acting with
134 reference thereto had, at the time when the transfer was made,
135 reasonable cause to believe that the insurer was insolvent or was about
136 to become insolvent; or (D) the creditor receiving it was an officer, or
137 any employee or attorney or other person who was in fact in a position
138 of comparable influence in the insurer to an officer whether or not he
139 held such position, or any shareholder holding directly or indirectly
140 more than five per centum of any class of any equity security issued by
141 the insurer, or any other person, firm, corporation, association, or
142 aggregation of persons with whom the insurer did not deal at arm's
143 length.

144 (3) Notwithstanding subdivision (2) of this subsection or any other
145 provision of this chapter, no preference that arises under or in
146 connection with any pledge, security, credit, loan, advance,

147 reimbursement or guarantee agreement or arrangement or any similar
 148 agreement or arrangement or other credit enhancement to which a
 149 Federal Home Loan Bank, as defined in 12 USC 1422, as amended from
 150 time to time, is a party shall be avoided by the liquidator or any other
 151 person.

152 [(3)] (4) Where the preference is voidable, the liquidator may
 153 recover the property, or if it has been converted, its value from any
 154 person who has received or converted the property, except where a
 155 bona fide purchaser or lienor has given less than fair equivalent value,
 156 he shall have a lien upon the property to the extent of the
 157 consideration actually given by him. Where a preference by way of lien
 158 or security title is voidable, the court may on due notice order the lien
 159 or title to be preserved for the benefit of the estate, in which event the
 160 lien or title shall pass to the liquidator.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	38a-907
Sec. 2	October 1, 2013	38a-928
Sec. 3	October 1, 2013	38a-930(a)

INS *Joint Favorable Subst. -LCO*

BA *Joint Favorable*